

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:MSR:AOK:OKL:TL-N-8078-98
CGMcLoughlin

date: JUN 01 1999

to: Chief, Examination Division, Kansas-Missouri District
David Moser, District Technical Coordinator

from: District Counsel, Arkansas-Oklahoma District, Oklahoma City

subject: Request for Advisory Opinion

Taxpayer: [REDACTED]

Taxable year: [REDACTED]

Related taxpayer: [REDACTED]

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination or Appeals recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

Although we informally coordinated this matter with the National Office, the advisory is subject to the review procedures of CCDM (35)3(19)4(4). The CCDM procedures require us to transmit a copy of the memorandum to the National Office. The National Office has ten days from receipt of our memorandum to respond. The National Office may extend the review period if necessary. We will keep you informed of any delays.

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DISCUSSION

We are responding to your April 13, 1999 memorandum to Associate District Counsel, Kansas City, requesting a supplemental opinion on certain TEFRA partnership statute extensions. Your request specifically asked for clarification of a December 30, 1998 memorandum we issued to Examination Division, Arkansas-Oklahoma District. The memorandum advised Arkansas-Oklahoma Examination Division that, where a tax matters partner ("TMP") is a member of a consolidated return group, any Form 872-P should be signed by two parties. The Form 872-P should be signed both by the TMP and the TMP's consolidated parent for the year at issue. (b)(7)a

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Facts

is the parent for a consolidated income tax return group. and other members of the group are involved in the business. Some of its businesses are conducted through TEFRA partnerships. Some of's direct and indirect subsidiaries acted as TMP's for the TEFRA partnerships during the taxable year.

In, spun-off one of its subsidiaries to its shareholders. The former subsidiary was renamed and its subsidiaries continued to operate the former businesses of. Due to certain regulatory requirements, had to divest its operations to enter the markets.

, as parent for the new consolidated return group, filed a consolidated income tax return for a short taxable year beginning in and ending December 31, . Prior to the spin-off, the subsidiaries had been members of the consolidated return group. The subsidiaries' distributive shares of income and deductions from the TEFRA partnerships for had been reported on the consolidated return. After the taxable year, ("") acquired . The former subsidiaries are now members of the consolidated return group.

Pursuant to an agreement with Arkansas-Oklahoma Examination Division, you requested [REDACTED] to countersign certain Forms 872-P. The Forms 872-P involve the [REDACTED] taxable year and cover TEFRA partnerships where former [REDACTED] subsidiaries act as TMP's. All of the TMP's were members of the [REDACTED] consolidated return group in [REDACTED].

Although the TMP's have signed the extension forms, [REDACTED] has refused to countersign the Forms 872-P. [REDACTED] puts forth several reasons. [REDACTED] alleges it lacks authority to sign the Forms 872-P now that the TMP's are no longer part of the [REDACTED] consolidated return group. [REDACTED] also alleges that it has no right to sign the extensions under a tax sharing agreement with [REDACTED]. [REDACTED] also claims its signature is unnecessary and that only the TMP's signature is needed under I.R.C. § 6629(b)(1)(B). Lastly, [REDACTED] argues, that if a consolidated parent's signature is needed on a Form 872-P, [REDACTED] has hundreds of invalid statute extensions covering other partnerships. (b)(7)e

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Analysis

I.R.C. § 6229(a) provides the statute of limitations for assessment of income tax attributable to TEFRA partnership items and affected items. The statute of limitations shall not expire until 3 years after the filing of the partnership return or the due date for the return, whichever is later. I.R.C. § 6229(a). I.R.C. § 6229(b)(1)(B) allows the statute of limitations to be extended, with respect to all partners, by an agreement in writing between the government and the TMP (or any other person authorized by the partnership in writing to enter into such an agreement). The agreement must be entered into before the statute of limitations expires. I.R.C. § 6229(b)(1)(B).

Treas. Reg. § 1.1502-77(a) generally provides that the consolidated parent is the sole agent for each subsidiary in all matters relating to the tax liability for the consolidated return year. While the regulation contains a few exceptions to the general rule, the regulation does not specifically limit the consolidated parent's otherwise expansive authority with respect to TEFRA partnerships. Since the parent is the sole agent for all members of the consolidated group, the parent's consent may

be needed to extend the I.R.C. § 6229(a) statute of limitations on behalf of a consolidated group member acting as TMP. Because of the uncertain impact of Treas. Reg. § 1.1502-77(a), it is the government's policy to obtain both the TMP's signature and the consolidated parent's signature on a Form 872-P. The consolidated parent would be signing the statute extension on behalf of the corporate TMP.

Alternatively, I.R.C. § 6229(b)(1)(A) permits a partner to extend the assessment statutes on its own behalf. Since the former [REDACTED] subsidiaries, which are acting as TMP's, were part of [REDACTED] consolidated return group during the taxable years at issue, [REDACTED] has the authority to extend the I.R.C. § 6229 assessment statute on their behalf. Treas. Reg. § 1.1502-77(a). The extension can be done using a Form 872 which includes the following language:

Without otherwise limiting the applicability of this agreement, this agreement also applies to extend the period to assess the amounts of any Federal income tax with respect to the taxpayers attributable to any partnership items (or any affected items) for taxable periods ending with or within the taxable years ended _____, _____ through _____, _____, which may be assessed at any time on or before _____, _____. If a notice of Final Partnership Administrative Adjustment is mailed to any partnership covered by this agreement, the time for assessing tax for the periods stated in the notice of Final Partnership Administrative Adjustment shall be suspended for the period during which an action may be brought under section 6226 of the Internal Revenue Code (and, if a petition is filed under section 6226 with respect to such administrative adjustment, until the decision of the court becomes final) and for 1 year thereafter.

This language will effectively extend the I.R.C. § 6229 assessment for all partnership interests held by the [REDACTED] consolidated return group and might satisfy [REDACTED]'s concerns.

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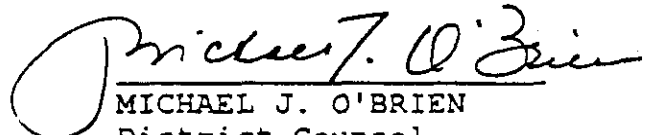
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Please contact Glenn McLoughlin at (405) 297-4803 if you have any questions.


MICHAEL J. O'BRIEN
District Counsel

cc: ARC (TL), Midstates Region
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